IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 12050 of 2004

Between:

Padvala Mutyala Rao S/o Narayana Murhty,
C/o Sun Foods and Feeda, Basaregadi, Medchal Mandal, Ranga reddy Distrirct

..... PETITIONER

AND

1 Deputy Registrar of Co-op Societies Divisional Co-Op Society, Bhimavaram , West Godavari District
2 Sale Officer, Co-operataive Societies, Narasapur, West Godavari District
3 The Palakol Co-Op Urban Bank Ltd., No.F.123 Palakol, West Godavari District, rep. by its Secretary.
4 Yepuganti Venkata Satyanarayana @ Annavaram, S/o Paddanna Kattupalem, Yelamanchili Mandal, West Godavari District .
(C.T.of R4 is amended as per Court Order dated 12/08/2004 in WPMP 18304/2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ order or direction declaring the action of the respondents by conducting the sale of the petitioner property admeasuring 361 sq Yards of site a daba house therein of Kattupalem village, yalamanchili Mandal, west Godavari District in CEP.No.320/2002/2003 conducted by the 2nd respondent on 20/03/2004 without issue notice to petitioner at any point of time is illegal, arbitrary and violation of principles of natural justice and consequentially set aside the same.

Counsel for the Petitioner : MR. P.VINAYAKA SWAMY

Counsel for the Respondents : GP FOR COOPERATION

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.12050 OF 2004

ORDER :

This writ petition is filed seeking a declaration that the action of the 2nd respondent – Sale Officer, Co-operative Societies, Narasapur, West Godavari District in proposing to conduct the sale of the petitioner's property admeasuring 361 square yards of site together with a house situated in Kattupalem village, Yalamanchili Mandal, West Godavari District in C.E.P.No.320 of 2002-2003 on the file of the 1st respondent - Deputy Registrar of Co-operative Societies, Bhimavaram as arbitrary and illegal.

The petitioner, a resident of Kattupalem Village of Yalamanchili Mandal, West Godavari District claims to be a member of the 3rd respondent – The Palkol Co-operative Urban Bank Limited. He states that in the year 1997 he made a request for grant of loan of Rs.50,000/- for purpose of his agricultural operations. However, the loan amount was not released in lumpsum as sought by him and a total sum of Rs.48,500/- was released in installments. The petitioner states that in view of the delay in releasing the amounts, he could not make use of the same for the purpose of his agricultural operations and consequently sustained heavy loss. In spite of the same, he has been repaying the loan amount in installments. Subsequently, he had to shift his family to Hyderabad and even thereafter he continued to pay the installments, the last payment being on 22-01-2004. Thereafter, when he approached the third respondent Bank in June, 2004, he came to know that the house property belonging to him situated in Kattupalem village was put to auction by

the third respondent Bank on 20-03-2004 and that the fourth respondent herein was declared as the highest bidder for a sum of Rs.1,55,000/-. It was found that the third respondent Bank initiated execution proceedings in CEP.No.320/2002-2003 on the basis of an award passed by the 1st respondent dated 13-08-2002 and consequently the auction of the house property took place on 20-03-2004. It is alleged that there was no notice to the petitioner at any point of time either with regard to the award or with regard to the sale dated 20-03-2004 and that the 4th respondent who is closely related to him has colluded with the Bank officials and the sale proceedings were managed in his favour for a meager sum of Rs.1,55,000/-; whereas the said property is worth about Rs.6 lakhs. The petitioner states that when he approached the 1st respondent and requested not to execute the sale deed in favour of 4th respondent, he was assured that if the entire amount due is paid, the sale would be cancelled. Accordingly, the petitioner was ready to pay the entire amount due under the loan account. However, the same was not accepted by the 1st respondent insisting a no objection certificate from the fourth respondent. Hence, this writ petition seeking the above relief.

This Court while directing notice before admission, by order dated 14-07-2004, directed the respondents to maintain Status Quo as on that date.

On receipt of notice, the 3rd respondent Bank filed a counter-affidavit denying all the allegations made by the petitioner. It is stated that the petitioner having availed the loan failed to make even a single installment and since his whereabouts were not known, the third respondent Bank made a claim before the 1st respondent. In pursuance thereof, the matter was referred to an Arbitrator and an award was passed on 13-08-2002 for a sum of Rs.92,358/-. It is also stated that the loan was availed by the petitioner for the purpose of construction of a house and not for the purpose of agricultural operations as claimed by him. On the basis of the award, the 1st respondent in Execution Petition No.320/2002-2003, issued a sale notice dated 06-02-2004 and consequently the property was auctioned on 20-03-2004. The highest bidder has paid the entire bid amount of Rs.1,55,000/-. The allegation of the petitioner that there was no notice to him any point of time before conducting auction of the mortgaged property has been denied. The other allegation as to the collusion

of the third respondent Bank officials with the auction purchaser (4th respondent) has also been denied. It is further stated that the auction purchaser has already deposited the entire bid amount together with the stamps and that the writ petition filed without exhausting the alternative remedy available under the statute is not maintainable and liable to be dismissed.

The fourth respondent filed a separate counter-affidavit on the same lines. He denied the allegations made by the petitioner and stated that in pursuance of the auction notice issued by the third respondent, he participated in the auction and being the highest bidder, he has deposited the entire sale consideration as well as the necessary stamp duty.

Heard the learned Counsel for both parties and perused the material on record.

At the outset, it is to be noted that Rule 52 of the A.P. Co-operative Societies Rules provides for a detailed procedure for execution of decrees, decisions, or orders passed under the A.P. Co-operative Societies Act. Under sub-rule (13) of Rule 52 where any immovable property has been sold by the sale officer any person either owning such property or holding an interest therein by virtue of a title acquired before such sale may apply to the Registrar of the District to have the sale set aside on his depositing with him the amount specified under clauses (a) & (b). Such an application has to be made within 30 days from the date of sale. Rule 14 also enables any person whose interests are affected by the sale to apply to the Registrar of the District for setting aside the sale on the ground of material irregularity or mistake or fraud in publishing or conducting the sale. Further, the Act also provides for an Appeal under Section 76 with regard to matters arising out of the execution proceedings. Thus, an adequate remedy is available under the statute and the petitioner ought to have availed the same before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The contentions raised by the petitioner with regard to the alleged irregularities committed by the respondents in conducting the sale which require investigation into disputed questions of fact on appreciation of the evidence that may be adduced by the parties cannot be gone into in summary proceedings under Article 226 of the

Constitution of India.

In the circumstances, without expressing any opinion on merits of the case, I deem it appropriate to dispose of the writ petition granting leave and liberty to the petitioner to work out the appropriate remedy as available under the Statute within 30 days from today. In case, the petitioner institutes any such proceedings within the time fixed above, the same shall be considered and appropriate orders shall be passed in accordance with law as expeditiously as possible within eight weeks thereafter. Keeping in view the plea of the petitioner that he is in possession of the property in question as on today and since this Court by order dated 14-07-2004 directed the respondents to maintain Status Quo, to meet the interest of justice, there shall be a direction to continue the said order of Status Quo till the application is disposed of.

Writ Petition is accordingly disposed of. No costs.

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29th September, 2004.

Note:- CC in 3 days.

(B/O)

gbs/klp

To

1 Deputy Registrar of Co-op Societies Divisional Co-Op Society, Bhimavaram , West Godavari District
2 Sale Officer, Co-operataive Societies, Narasapur, West Godavari District
3 The Secretary, Palakol Co-Op Urban Bank Ltd., No.F.123 Palakol, West Godavari District.

4.2CCs to G.P. for Co-operation, High Court of AP Bldgs, Hyderabad (OUT).

5.2CD copies